

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION**

**TOMMY D. HALL  
ADC#105963**

**PETITIONER**

**VS.**

**CASE NO.: 5:13CV00340 DPM/BD**

**RAY HOBBS, Director,  
Arkansas Department of Correction**

**RESPONDENT**

**RECOMMENDED DISPOSITION**

**I. Procedure for Filing Objections**

The following Recommended Disposition (“Recommendation”) has been sent to United States District Court Judge D.P. Marshall Jr. Mr. Hall – or any party – may file written objections to this Recommendation.

Objections must be specific and must include the factual or legal basis for the objection. An objection to a factual finding must identify the finding of fact believed to be wrong and describe the evidence that supports that belief.

An original and one copy of objections must be received in the office of the United States District Court Clerk within fourteen (14) days of this Recommendation. A copy will be furnished to the opposing party.

If no objections are filed, Judge Marshall can adopt this Recommendation without independently reviewing all of the evidence in the record. By not objecting, you may also waive any right to appeal questions of fact.

Mail your objections to:

Clerk, United States District Court  
Eastern District of Arkansas  
600 West Capitol Avenue, Suite A149  
Little Rock, AR 72201-3325

## **II. Discussion**

Pending is Respondent Ray Hobbs's motion to dismiss petition for writ of habeas corpus. (docket entry #6) Petitioner Tommy Hall has responded to the motion. (#8) For the following reasons, Respondent's motion should be GRANTED, and the Court should DISMISS Mr. Hall's petition, without prejudice.

Mr. Hall, an inmate in the Arkansas Department of Correction, filed a petition for writ of habeas corpus (docket entry #2), challenging his probation revocation in 2005. Mr. Hall previously filed a habeas petition in the United States District Court for the Western District of Arkansas, in which he challenged the same probation revocation he challenges in the pending petition. See *Hall v. Hobbs*, 4:09CV04079-HFB (W.D.Ark. dismissed Nov. 23, 2010). After the District Court dismissed Mr. Hall's petition, the Court of Appeals for the Eighth Circuit denied his application for a certificate of appealability. *Id.* at docket entry #55. The United States Supreme Court denied certiorari on April 16, 2012. *Id.* at docket entry #57.

Before filing a successive habeas corpus petition in a district court, a petitioner must seek and receive an order from the appropriate court of appeals authorizing the district court to consider the petition. 28 U.S.C. § 2244(b)(3)(A). Without an order from

the court of appeals authorizing the filing of a second or successive petition, the district court lacks jurisdiction to hear the petition. *Burton v. Stewart*, 549 U.S. 147, 152-53, 157 (2007).<sup>1</sup> Summary dismissal of a habeas corpus petition – prior to any answer or other pleading being filed by the respondent – is appropriate where the petition itself and court records show that the petition is a second or successive petition filed without authorization from the court of appeals. Rule 4, Rules Governing Habeas Corpus Cases; *Blackmon v. Armontrout*, 61 Fed.Appx. 985, 985 (8th Cir. 2003).

The pending petition is “successive” because Mr. Hall has already filed a petition raising the same issues he raises in this petition. There is nothing in the record to indicate that Mr. Hall sought and received authorization from the court of appeals before filing this successive petition. He must apply for, and receive, permission from the Court of Appeals for the Eighth Circuit before filing another habeas corpus petition challenging his conviction and probation revocation. Without permission from the Court of Appeals, the district court cannot consider this case. 28 U.S.C. § 2244(b)(1)-(3)(A).

### **III. Conclusion**

The Court recommends that Judge Marshall GRANT Respondent’s motion to dismiss (#6) and DISMISS Tommy Hall’s successive petition for writ of habeas corpus, without prejudice, for lack of jurisdiction. The Court further recommends that Judge Marshall deny a certificate of appealability. All pending motions should be dismissed as

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<sup>1</sup> The court of appeals can authorize the filing of a successive petition only if the new petition satisfies certain statutory requirements. See 28 U.S.C. § 2244(b)(2).

moot.

DATED this 9th day of December, 2013.

  
UNITED STATES MAGISTRATE JUDGE